

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Numbering Resource Optimization

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CC Docket No. 99-200

To: The Commission

**COMMENTS OF**  
**WINSTAR COMMUNICATIONS, INC.**

Winstar Communications, Inc. ("Winstar") hereby respectfully submits its comments on the Commission's *Second Further Notice of Proposed Rulemaking* ("*Second Further Notice*") in the above-captioned proceeding.<sup>1</sup> As explained in more detail below, Winstar urges the Commission to treat all carriers equally, to allow its existing optimization measures to take effect before creating new rules and procedures, and to enforce its current federal numbering policies. In this way, the Commission can best assure that numbering resources are utilized as efficiently as possible.

**I. THE FCC SHOULD NOT LIFT THE BAN ON TECHNOLOGY- OR SERVICE-SPECIFIC OVERLAYS**

Winstar remains convinced that all service providers and services should be treated in a similar fashion with respect to numbering resources. Although Winstar is

<sup>1</sup> *Numbering Resource Optimization; Petition for Declaratory Ruling and Request for Expedited Action; Petition for Declaratory Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, FCC 00-429 (rel. Dec. 29, 2000) ("Second Further Notice").*

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sympathetic to state commissions that believe service-specific and technology-specific overlays should be permissible, it must be recognized that there is no evidence that such overlays provide any additional numbering resource optimization benefits. The one case in which a wireless-only overlay was approved, the 917 overlay in New York, yielded no benefits despite imposing significant burdens and costs on wireless carriers and their customers. Technology- and service-specific overlays are not beneficial because they only provide the appearance of “conserving” numbers. In reality, the only numbers that are conserved are due to the implementation of a new area code. Technology- and service-specific overlays are also more likely to strand numbering resources than all-service overlays, which leads to discrimination because the stranded numbers are not available to all groups of carriers that need them. Therefore, technology- and service-specific overlays lead to more inefficient utilization of numbering resources and discrimination against groups of carriers and their customers.

Winstar supports the goal of the Joint Wireless Commenters, which is to ensure that all carriers have timely access to the numbering resources they need. However, Winstar is very concerned that any technology- or service-specific overlay – even on a temporary basis – will lead to unacceptable discrimination, particularly if the limitations on the phase-in period are extended or ignored. The effects of this discrimination may also outweigh the benefits that phased-in overlays offer, particularly because the proposal calls for the phased-in overlays to be converted to all-service overlays by November of 2002.

Winstar also agrees with the Joint Wireless Commenters that rationing must be eliminated. Far too often, rationing is used as a substitute for the implementation of timely area code relief. Winstar submits that the true solution to the problems that the phased-in overlay proposal seeks to address is the timely implementation of area code relief, which is already

required under the Commission's rules. Rather than create new forms of area code relief like phased-in overlays, Winstar urges the Commission to enforce its current rules by requiring states to implement area code relief on a timely basis. Enforcement of the Commission's rules on timely area code relief is crucial because non-compliance is limiting competition and economic prosperity.

## **II. THE COMMISSION SHOULD CONTINUE TO ENCOURAGE RATE CENTER CONSOLIDATION**

Winstar urges the Commission to continue its efforts to promote rate center consolidation as one of the most effective means of reducing demand on central office codes. Rate center consolidation is a very effective numbering optimization means because carriers typically need at least one NXX code or 1,000 number block in each rate center in order to compete within any market. The fewer rate centers there are in a market, the fewer NXX codes or 1,000 number blocks that a carrier must request to compete in that market.

Although some states have consolidated rate centers, many have not. The reasons for state inaction are numerous, ranging from concern about the effects of rate rebalancing to public safety issues. Without a means for sharing practical knowledge and detailed data on rate center consolidation, it is difficult for states to benefit from the collective knowledge on potential solutions to obstacles that can impede rate center consolidation. Although requesting comment in this proceeding on rate center consolidation as a general matter is helpful, the information that the FCC will receive in response may not contain enough detail to facilitate further rate center consolidation.

In addition to seeking general comments on rate center consolidation, the Commission should develop a rate center consolidation "road map" by assigning to the North American Numbering Council ("NANC") the task of preparing a detailed report on the issues

that carriers and consumers face when rate centers are consolidated. The Commission should also hold hearings and workshops with state public utility commissions and the industry, including public safety officials and incumbent local exchange carriers. By preparing detailed analyses on rate center consolidation and holding hearings and workshops in which the results of these analyses can be discussed, the FCC will create incentives for further rate center consolidation, as well as facilitate creative solutions to the obstacles that have prevented more rate center consolidation to date.

### **III. THE COMMISSION SHOULD NOT WITHHOLD NUMBERING RESOURCES FROM RELATED ENTITIES**

In the *Second Further Notice*, the Commission tentatively concludes that carriers, in certain instances, should have numbering resources withheld when related carriers fail to comply with its mandatory reporting requirements.<sup>2</sup> Winstar submits that it is unwise for the FCC to require the North American Numbering Plan Administrator (“NANPA”) to determine whether it is appropriate to deny numbering resources to an entire company – or even all entities that are related to an applicant – as a result of an apparent failure to comply with the reporting or other numbering requirements in another NPA or market. Not only would the application approval process become unmanageable, but it would also become too lengthy, which could cause carriers to run out of numbers while they are waiting for NANPA to process their application for additional numbering resources.

Furthermore, Winstar expects that most violations will be unintentional and isolated occurrences in single switches and, under these circumstances, it would be inappropriate to punish related entities. The Commission’s current enforcement tools, including monetary

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<sup>2</sup> See *Second Further Notice* at ¶ 150.

forfeitures, create more than adequate incentives for parent companies to ensure that their subsidiaries comply with numbering policies, particularly because carriers are keenly aware that even minor aberrations in growth or revenue projections can have far-reaching effects as carriers are under increasing scrutiny by investors and analysts. Thus, further action to increase the involvement of parent companies by the Commission is not required.

#### **IV. CURRENT STATE ACCESS TO NRUF DATA IS SUFFICIENT**

The FCC has granted state public utility commissions access to NRUF data and ordered the NANPA to provide this data in a format that facilitates analysis (“secure electronic transfer, including e-mail, or on a computer disk”).<sup>3</sup> Winstar cannot foresee any circumstance under which this level of information will not be sufficient to meet the needs of the states and does not believe that states should have direct access to the NRUF data. Recent security breeches of supposedly secure websites (*e.g.*, Microsoft websites) highlight the difficulty of protecting confidential and proprietary information and should cause the Commission to tread lightly before permitting remote access to the extremely sensitive data that is gathered through the NRUF reporting process. Winstar believes that the current level of access that state public utility commissions have to NRUF data is sufficient because states already have a right to receive NRUF data in the format they specify, and additional access would create unacceptable security risks.

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<sup>3</sup> *Id.* at ¶ 118.

**V. THE COMMISSION SHOULD ADOPT THE NANC PROPOSALS ON FEES FOR RESERVED NUMBERS**

Winstar continues to support the proposals in the recommendation that the NANC made to the Commission on extending number reservations for a fee. A uniform recurring fee, set by the FCC, should be assessed on end-users. Service providers should collect the fee from end-users, deduct their costs, and forward the remaining funds to the FCC through North American Billing and Collection, Inc. ("NBANC"). The total funds collected industry-wide should be used to offset total numbering administration costs, like the NANP and national pooling administration, but not any carrier's individual costs. Numbers could be reserved by end-users so long as they continue to pay the fee. The NANC suggested an interim fee of \$0.25 per number until the FCC gathers enough information to set permanent price, and Winstar believes that this amount is reasonable, at least as a starting point.

Winstar believes the NRO-WG recommendation would produce the desired result – to decrease the quantity of numbers held in reserve – while meeting the needs of end users who have a legitimate reason to reserve numbers. The fee itself is assessed on the end user that is actually deriving the benefit from the reservation. There would be no revenue windfall for service providers since they do not keep the reservation fees, and thus, no incentive for service providers to abuse the extensions. However, service providers should be entitled to a percentage of the reservation fees in order to cover the costs of collecting the fees. The new utilization requirements, as well as the effect of reserved numbers on a carrier's ability to achieve the utilization thresholds before obtaining growth resources, serve as a further check on unnecessary extensions of number reservations.

**VI. STATE COMMISSIONS SHOULD NOT BE DELEGATED AUTHORITY TO CONDUCT NUMBERING AUDITS**

The current audit structure is more than sufficient to ensure compliance with FCC numbering regulations because carriers already know that they will be subject to a for cause audit if the FCC or any state commissions suspect that they have violated the numbering requirements, and that they must adopt and implement compliance programs to minimize the risk that numbering violations will be detected during a random audit. An additional delegation of audit authority to state commissions would be excessive, because the current audit structure allows states to participate in FCC managed audits. Allowing states to initiate independent audits would subject service providers to the potential of multiple-level audits governed by inconsistent standards. Even if state public utility commissions were required to adhere to a set of federal standards, different interpretations of these standards would unduly burden service providers. It would be particularly unwise to delegate to state public utility commissions the independent authority to perform “for cause” audits in which subjective judgments must be made as to the initiation and scope of the audit because it is not always certain before the “for cause” audit is completed that an intentional violation has occurred, or how broad the “for cause” audit must be in order to determine whether there has been an intentional violation.

Moreover, delegating audit authority to state public utility commissions will also raise costs unnecessarily. State “for cause” audits would merely duplicate federal “for cause” audits. Random audits conducted at the state level would increase the chances that individual carriers will be audited since there would be 51 potential generators of random audits. This would increase the burdens imposed upon carriers to an unacceptable level, particularly considering that a random audit may confirm that the audited carrier is in full compliance with

all applicable numbering requirements. Therefore, the FCC should deny requests by states for additional audit authority.

## **VII. THE FCC SHOULD NOT CREATE PRIMARY OR SECONDARY MARKETS FOR NUMBERING RESOURCES**

In its comments filed with the Commission on July 30, 1999 in response to the *Notice of Proposed Rulemaking* in this proceeding, Winstar voiced its objection to market-based allocation systems for numbering resources, both because the FCC lacks authority to implement numbering auctions and because auctions would not improve the efficiency with which carriers utilize numbering resources. For the sake of brevity, Winstar will not repeat those arguments here. However, Winstar continues to oppose the concept of market-based allocation systems. Winstar believes that the public would not tolerate a federally mandated charge or auction for telephone numbers, which serve as electronic street addresses. In the end, consumers will end up paying for numbers if auctioned, and the price for these numbers would vary based on where these consumers are located. Equally as important, however, is that the sale or auction of numbers in an open market would favor service providers with the deepest pockets and pave the way for a potential monopoly of these resources.

Although the Commission attempts to be more comprehensive in the *Second Further Notice*, many crucial questions about market-based allocation schemes remain unanswered. For example, how would the FCC determine the “cost” of numbers currently in carriers’ inventories, recover the costs from the carriers to whom the numbers have been allocated, and reflect the costs in uniform system of accounts? If the price for these numbers is set administratively, what logic would there be for charging more or less for newly acquired numbers? How would the financial markets react to market-based allocation schemes, and how would this reaction affect the ability of service providers to attract financing for network build-



outs or upgrades? The investment community may react negatively if funds must be diverted to pay for telephone numbers rather than network upgrades. Winstar believes that attaching a direct cost for telephone numbers would create a chilling effect on market entry or expansion of services, and it could put some newer entrants out of business.

Winstar similarly objects to the concept of establishing an end-date for the current NANP. This proposal amounts to a rationing scheme because it relies on an arbitrarily set date for expansion of the NANP rather than actual need based on end user demand. For this reason, carriers with a genuine need for additional numbering resources frequently do not have access to numbers under rationing schemes. Moreover, rationing of this sort completely removes any market basis for the usage of numbers, which was the Commission's stated goal for exploring market-based allocation schemes. The FCC should instead focus on other optimization measures, including geographic number portability.

#### **VIII. THE FCC SHOULD CREATE A UNIFORM FEDERAL SAFETY VALVE PROCEDURE**

Winstar urges the Commission to create a uniform, federal safety valve procedure to ensure that all carriers are treated equally in those rare instances when strict adherence to the utilization thresholds is impossible. The safety valve procedure should allow carriers that have a three month or less supply of numbering resources to obtain additional numbering resources even if they do not meet the applicable utilization threshold. The FCC should establish clear and consistent eligibility conditions for the safety valve. These conditions should be designed to ensure that applicants genuinely need additional numbering resources within three months, and that the applicant will need numbers before meeting the utilization threshold due to specific and verifiable customer needs or technical inability to meet the threshold. Although operation of the safety valve should occur in very limited circumstances, the eligibility conditions should not be


so burdensome that carriers cannot demonstrate eligibility or that the FCC cannot process the applications quickly. The FCC should be the only body to administer the safety valve procedures in order to preserve the neutrality of the NANPA and the Pooling Administrator(s).

### **CONCLUSION**

For the foregoing reasons, Winstar urges the Commission to treat all carriers equally, to allow its existing optimization measures to take effect before creating new rules and procedures, and to enforce its current federal numbering policies. In this way, the Commission can best assure that numbering resources are utilized as efficiently as possible.

Respectfully submitted,

**WINSTAR COMMUNICATIONS, INC.**

  
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DATED: February 14, 2001

CERTIFICATE OF SERVICE

I, Michelle L. Arbaugh, hereby certify that I have caused a copy of the foregoing "Comments of Winstar Communications, Inc." to be served on this 14<sup>th</sup> day of February, 2001, via hand delivery, upon the following:

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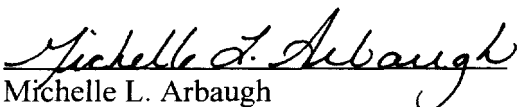
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